UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION MDL No.1456

Master File No. 01-CV-12257-PBS Subcategory No. 06-CV-11337-PBS

THIS DOCUMENT RELATES TO:

United States of America ex rel. Ven-A-Care of)
the Florida Keys, Inc., et al. v. Boehringer)
Ingelheim Corporation, et al., Civil Action No.)
07-10248-PBS

Judge Patti B. Saris

Magistrate Judge Marianne B. Bowler

Oral Argument Requested

THE ROXANE DEFENDANTS' MOTION FOR A FINDING OF SPOLIATION AND FOR SANCTIONS

Pursuant to FED. R. CIV. P. 34 and 37 and the Court's inherent power to oversee discovery and prevent spoliation and litigation abuses, Defendants Boehringer Ingelheim Roxane, Inc., Roxane Laboratories, Inc., Boehringer Ingelheim Pharmaceuticals, Inc., and Boehringer Ingelheim Corporation (collectively, the "Roxane Defendants") respectfully request that this Court issue an order (1) finding that the United States has spoliated evidence in this case and that sanctions are warranted and (2) issuing appropriate sanctions. The grounds supporting the requested relief and recommended sanctions are set forth in the accompanying memorandum, as well as in the Abbott and Dey motions for spoliation of evidence and memoranda in support thereof, *see* Docket Nos. 6096-6097 and 6109-6110, respectively, which the Roxane Defendants hereby join.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), the Roxane Defendants request oral argument on the issues raised in this Motion, which they believe will assist the Court in deciding this Motion.

Dated: July 9, 2009

/s/ John W. Reale

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on July 9, 2009, a copy to LexisNexis File and Serve for posting and notification to all parties.

/s/ John W. Reale John W. Reale